

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JEAN MARC VAN DEN HEUVEL,
Plaintiff,
v.
AMPM MINI MART,
Defendant.

No. 2:23-cv-00752-TLN-AC

ORDER

On August 14, 2023, the Ninth Circuit referred the matter to this Court for the limited purpose of determining whether Plaintiff's *in forma pauperis* ("IFP") status should continue on appeal or whether the appeal is frivolous or taken in bad faith. (ECF No. 19 at 1 (citing 28 U.S.C. § 1915(a)(3); *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002)).)

"An appeal may not be taken [IFP] if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). "The test for allowing an appeal [IFP] is easily met . . . [t]he good faith requirement is satisfied if the [appellant] seeks review of any issue that is 'not frivolous.'" *Gardner v. Pogue*, 558 F.2d 548, 550–51 (9th Cir. 1977) (quoting *Coppedge v. U.S.*, 369 U.S. 438 445 (1962)); *see also Hooker*, 302 F.3d at 1092 (noting that an appeal is taken in "good faith" if it seeks review of "non-frivolous" issues and holding that if at least one issue or claim is non-frivolous, the appeal must proceed IFP as a whole). An action is frivolous "where it

1 lacks an arguable basis in either law or fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In
2 other words, the term “frivolous,” as used in § 1915 and when applied to a complaint, “embraces
3 not only the inarguable legal conclusion, but also the fanciful factual allegation.” *Id.*

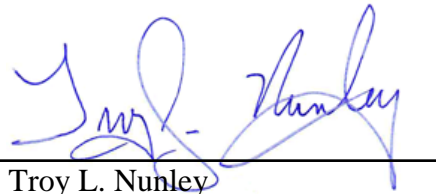
4 In the instant case, the magistrate judge found Plaintiff’s Complaint to be unintelligible
5 and lacking any facts to support a cognizable claim. (ECF No. 4.) The Court adopted the
6 magistrate judge’s findings and recommendations in full and dismissed the case. (ECF No. 12.)
7 Based on the record before it, the Court cannot conceive of any valid grounds upon which an
8 appeal can be based. The Court therefore finds that Plaintiff’s appeal is frivolous and not taken in
9 good faith. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3)(A); *Hooker*, 302 F.3d at 1092;
10 *Neitzke*, 490 U.S. at 325. Plaintiff’s IFP status on appeal should therefore be revoked.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. Plaintiff’s *in forma pauperis* status on appeal is hereby REVOKED; and
- 13 2. The Clerk of the Court is directed to serve this Order on the Ninth Circuit Court of
14 Appeals in Case No. 23-15943.

15 IT IS SO ORDERED.

16 Date: August 17, 2023

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20 Troy L. Nunley
United States District Judge